

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL A. CARLSON, <i>et al.</i>,	:	CIVIL ACTION NO. 1:15-CV-2452
	:	
Plaintiffs	:	(Chief Judge Conner)
	:	
v.	:	
	:	
JOSH SHAPIRO, in his official	:	
Capacity as Attorney General of the	:	
Commonwealth of Pennsylvania, <i>et al.</i>,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 10th day of August, 2017, upon consideration of defendants' letter to the court dated June 29, 2017, and the attached documents produced to the court for *in camera* review pursuant to our order (Doc. 67) dated June 14, 2017, wherein defendants assert that the enclosed documents are protected from discovery by attorney-client privilege, and it appearing that plaintiffs dispute that the government may assert attorney-client privilege, (see Doc. 63 at 20-21), and contend that, assuming *arguendo* the privilege exists, the at-issue exception to privilege should apply, (id. at 21-22), and the court observing *first*, that the government may invoke attorney-client privilege in civil litigation, see United States v. Jicarilla Apache Nation, 564 U.S. 162, 170 (2011); Ross v. City of Memphis, 423 F.3d 596, 601 (6th Cir. 2005); In re Allen, 106 F.3d 582, 600 (4th Cir. 1997); see also In re Thirty-Third Statewide Investigating Grand Jury, 86 A.3d 204, 223 (Pa. 2014), and, *second*, that the at-issue exception to attorney-client privilege does not automatically apply when advice of counsel may be relevant to litigation, see

Rhone-Poulenc Rorer Inc. v. Home Indem. Co., 32 F.3d 851, 863 (3d Cir. 1994);
Mine Safety Appliances Co. v. N. River Ins. Co., 73 F. Supp. 3d 544, 571-72 (W.D. Pa.
2014), and the court noting that, upon thorough *in camera* review of the documents
over which defendants claim attorney-client privilege, all documents contain
communications between government employees and attorneys concerning legal
advice for the benefit of the Commonwealth, qualifying them as protected under the
attorney-client privilege, see Jicarilla Apache Nation, 564 U.S. at 170; In re Thirty-
Third Statewide Investigating Grand Jury, 86 A.3d at 223, and the court finding
that the at-issue exception does not apply in the instant circumstance, see Fid. &
Deposit Co. of Maryland v. McCulloch, 168 F.R.D. 516, 520 (E.D. Pa. 1996) (quoting
Rhone-Poulenc, 32 F.3d at 863), it is hereby ORDERED that plaintiffs' objections
(Doc. 63 at 20-22) to defendants' privilege log are OVERRULED.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania